IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1687 OF 2006

Bharat Kumar Hiralal Shah .. Petitioner

Versus

State of Maharashtra .. Respondent

Mr.Subhash Jha i/b. Law Global for petitioner

Mr.P.A.Pol, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 12th October 2006.

P.C.

. The grievance of petitioner who has approached this Court under Articles 226 and 227 of the Constitution of India read with Section

482 of Cr.P.C. is that the respondents have not registered offences against the accused named in the petition filed before the Judicial Magistrate First Class, Pen despite their being clear directions under section 156(3) of Cr.P.C. Petitioner is the original complainant. He filed a complaint, copy of which is at Exh.A against 5 persons, naming them as an accused and alleging that they have committed serious offences punishable under sections 376, 496, 493, 465, 468, 471 and 217 read with 34 I.P.C. This complaint was filed as the complainant was aggrieved by the fact that the police machinery is not taking action in accordance with law. Complaint was filed on 27th July 2006. On the same date, an order was passed, a copy of which is annexed as Exh.B page 20 which reads thus:-

> ". Necessary order about sending complaint under section 156(3) Cr.P.C. has been passed below the complaint

> Exh.1. Hence, the present application is filed."

2. Thereafter, the Court passed an order under section 202. That order is at page 26 of the petition paperbook. It reads thus:-

> "1. The complainant is hereby called upon to examine himself and all his witnesses before issuing process under section 202(2) of the Code of Criminal Procedure."

3. The submission of Mr.Jha appearing in support of this petition is that the order passed at page 20 Exh.B to this petition clearly directs investigation under section 156(3) of Cr.P.C. The plain duty of the investigating machinery, thereafter, is to proceed and investigate the case and take such steps as are permissible in law, thereafter. In fact, the complaint itself

prays that directions under section 156(3) be issued. The moment, they are issued, the purpose of petitioner was served and, thereafter, the investigating machinery was to act in accordance with the directions of the Court. Hence, the observations in the order that the present application is filed should not be construed as nothing but taking note of the grievance of the petitioner and issuing directions after the complaint is taken on record.

4. He submits that on the same date, the Judicial Magistrate, F.C. Pen passed an order below Exh.1 in Misc.Application No.51 of 2006. That is on the basis that the offences alleged are exclusively triable by the Court of sessions. Therefore, it is necessary to call upon the complainant to produce his witnesses and examine them on oath. The complainant is, therefore, called upon to examine himself and all his witnesses before issuing process under section

202(2) of Cr.P.C. Mr.Jha submits that the police machinery in the light of this direction has once again exhibited complete inaction and proceeded as if there is no duty to implement the earlier directions. Such a course is impermissible in law. The police machinery cannot go behind an order directing investigation. Its plain duty was to act in furtherence of the said order and take such steps as are permissible in law.

5. When this matter was placed before me on 13th September 2006, I had directed that an affidavit be filed, pointing out as to what steps the investigating machinery desires to take in the matter and the time frame within which it would act accordingly. In para 3 of my order dated 13th September 2006, I had recorded the submission of learned A.P.P. who was appearing then, along with a statement that the concerned police station will register C.R. and proceed further to investigate the complaint. However,

an affidavit has been filed by the Police Sub-Inspector who was then attached to Pen Police Station. In the affidavit, after stating in para 2 that at the instance of the present petitioner, F.I.R. No.339 of 2006 under section 366, 380 read with 34 I.P.C. was registered at Pen police station against his daughter and three other accused. The I.O. states that investigation is complete and since no substantial evidence is disclosed against the accused persons under the abovementioned offence, the case is pending for "C" Summary. However, with regard to the direction issued by the Court, the affidavit proceeds to state that the learned Magistrate has clarified that the order passed by me on 27th July 2006 should not be construed as a direction under section 156(3). It is in such circumstances that it was contended that clarification was sought. The learned Magistrate has directed that now the matter is placed for examination of complainant. In other words, the

proceedings are at the stage of section 202(2). In such circumstances and in the light of the clarification, there is no direction to investigate in the case.

6. In my view, there is no provision which is brought to my notice which would enable respondents to seek a clarification from the Court with regard to the orders passed on 27th July 2006. Application made on 26th September 2006 and the order passed thereon, cannot be supported, prima facie, by reading of the provisions of Cr.P.C. and more particularly section 362 thereof. I expressed a prima facie view, therefore, that such course of action was impermissible both, for the respondents and for the Judicial Magistrate, F.C. Pen. More so, when it is not disputed that the order at page 20 reproduced above was indeed passed on that date.

7. In the above circumstances, I sought

clarification from the A.P.P. as to whether the I.O. who is present in court would proceed and investigate the case and within what period. Learned A.P.P. after taking instructions from Parushuram Patil, Police Sub-Inspector presently attached to Pen police station makes a statement that investigations would be concluded within a period of six weeks from today.

8. In the light of this statement of A.P.P., after taking instructions from the I.O., I am of the view that the clarificatory order passed on 26th September 2006 would not survive. The investigating machinery to submit report of the investigations to the concerned court and, thereafter, learned Magistrate to issue such directions as are permissible in law. Petition disposed of.

(S.C.Dharmadhikari, J)